

2-28-2013

State v. Bettwieser Appellant's Reply Brief Dckt. 39106

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO
Plaintiff, Respondent

Ada County Docket CR-IN-2010-0030032

VS.

Supreme Court Docket 39106-2011

MARTIN BETTWIESER
Defendant, Appellant

APPELLANT'S REPLY BRIEF

Appealed from the District Court of the 4th Judicial District

State of Idaho, County of Ada

District Judge Kathryn A. Stricklen Presiding

MARTIN BETTWIESER
APPELLANT PRO-SE
3862 YORKTOWN WAY
BOISE, IDAHO 83706

LAWRENCE WASDEN
RESPONDENT
ATTORNEY GENERAL

RUSSEL SPENCER
DEPUTY ATTORNEY GENERAL
P.O. BOX 83720
BOISE, IDAHO 83720
208-334 4534

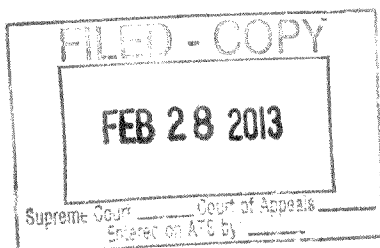


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REBUTTAL REPLY TO RESPONDENTS BRIEF

1.STATEMENT OF CASE

NATURE OF CASE

The State fails to address the issues presented in the appellant brief or the Notice of Appeal which included all interlocutory orders issued pursuant to I.A.R 17(1) (R. p.52) for a history of the nature of this case. This includes the orders from the magistrates division. The Supreme court can review the record independently of the decision of the district court.

“ Where the issues before the Supreme Court was the same issue that was before the district court, which heard the case in an appellant capacity on appeal from the magistrates court and based it's decision on the record before it, the Supreme court could review the record of the magistrate court independently of the decision of the district court.” Robinson v. Joint School District No., 331, 105 Idaho 487, 670 P.2d 894 (1983)

Therefore the Nature of this case arose from the issuance of the citation through pretrial matters, trial and post trial matters in the magistrates division, and all matters in the District Court acting in an appellant capacity.

STATEMENT OF FACTS AND COURSE OF PROCEEDINGS

Although the State asserts that the nature of this case is only from the District Courts dismissal, it cites facts and procedural history from the magistrates division concerning a motion to dismiss that was filed by Bettwieser (R. p.6,14) of which the State never addressed in the magistrates division, nor on appeal to the District court nor in it's, the Respondents brief. Additionally, it is impossible to distinguish from the format of the brief what are the facts that are presented and what are the course of proceedings which creates ambiguity to the record.

There are additional proceedings since the appellant's brief has been filed. On November 16, 2012 the District Court filed stamped and served an “ ORDER ON MOTION TO RECONSIDER” (Exhibit A.) In that order it states that it is addressing the Motion of Reconsideration of the June 28, 2012 order

on Bettwiesers objection to the clerks record. The court had already ruled on that objection.

(Appellants brief p.2) This could be considered an Amended order. In that order the court states that documents were stipulated to be included into the record and that it need not issue an order to include documents that were listed in the Amended Notice of Appeal. (Exhibit A p.2) These documents have not been included and the clerks will not amend it's record, that is why an order was needed.

Bettwieser is additionally prejudiced and or burdened by the lower court and clerks when it does not include the record as requested and so It does not appear that the interlocutory orders that are mentioned in Bettwiesers brief are part of the appeal record and so Bettwieser will present them in this brief as exhibits. The State will not be prejudiced as it did not care to address or recognize or argue the issues or from those filings in it's brief .

Before this court issues an opinion and after review of the briefs, allow and order a supplement or amendment to the appellant's brief so the issues may be fully addressed as intended. One of the issues presented in this appeal is if there is equal and fair access to the courts and record for pro-se litigants, specifically to Bettwieser in this instance, and with the clerks of the District.

ADDITIONAL FACTS

1. The District Court issued an order after the appellant's brief was filed.
2. There are numerous documents that are requested in the notice and amended notice of appeal that the clerks will not send to this court for review on appeal.
3. There are exhibits that were presented and admitted in the District Court from post trial issues including an Objection to the clerks record that the court nor clerks will forward to this court for review on appeal.
4. That Bettwieser seeks review of all the magistrates court and District Court acting in an appellant capacity as noticed in the Notice and Amended Notice of Appeal.
5. That Deputy Attorney General Russell Spencer made an intentional false statement under oath to this court for extension of time to file there brief when it stated it had attempted to contact me before the extension was sought. There has been no attempt to deny this allegation after it has been brought to there attention.

6. That the State through the attorney of Record Russel Spencer has stated under oath that no attempt has been made to contact Bettwieser because he is a pro-se litigant when they sought a second extension to file the Respondent's brief.
7. Infractions are quasi criminal actions.

2. ISSUES ON APPEAL

REBUTTAL ARGUEMENT

The State has sought to rephrase the issue in it's brief, and has not sought to address the issues that were presented in the appellant's brief. There is no provision under Idaho law to rephrase an issue on appeal. They can either state the issues are insufficient, incomplete or raise additional issues for review and list those issues but they cannot rephrase the issues. I.A.R. 34(b)(4) The State has not asserted any of those criteria. Neither has the State filed any responses in the Magistrates nor District Court acting in an appellant capacity, to any of Bettwiesers motions or objections and now wants to at this stage of the proceeding to rephrase or address an issue.

It is well known that this court will not address issues or argument by a party that did not address in the lower court. Borah v. McCandless 147 Idaho 73 This is why they did not address the issues in the appellant brief.

We also know as cited herein that this court can review issues of the magistrates court independently of of a District Court acting in an appellent capacity. Robinson v. Joint School District No., 331, 105 Idaho 487, 670 P.2d 894 (1983) and that;

“ The District Court is required to determine the appeal in the same manner and upon the standards of review as an appeal from the district court to the Supreme Court.” Gilman v. Jantic 138 Idaho 599 67 P. 3d 78n 203 Idaho Lexus 50 (2003)

and that quasi status cases such as infraction cases are are sui generis and so both civil and criminal rules apply. State v. Delezene 120 Idaho 473, 476

Even if this court could accept that the State can argue this case it could not find any credibility to

its argument. The State has set *McNett v. McNett*, 95 Idaho, 60, 501 P.2d 1059, 1060 (1972) as it's only basis to support the District Courts dismissal.

This court has already recognized in *Aho v. Idaho Transportation Department of State* No. 33837 January 29, 2008 145 Idaho 192, 177 Pac.3 406 that the Idaho Supreme Court denied argument for dismissal for failure to comply with appellate deadlines, in *McNett v. McNett* 95 Idaho 59, 501 P.2d 1059 (1972) as well as other reasons for dismissing such as in *Bunn v. Bunn* 99 Idaho 710, 587 P.2d 1245 (1978) and with strong public policy on hearing a case on its merits. Also technical error must show prejudice to the party from the delay. *Day*, 115 Idaho at 1017, 772 P.2d at 224. Prejudice to the party is an essential factor. It is an abuse of the power or dismissal to punish a period of delay which no longer exists if the defendant has not established prejudice resulting from the delay.

Further more since the Appellate brief has been filed the State has filed papers in the Idaho Supreme Court that further substantiates Bettwieser claim of unfairness and equal access that has been denied to that of pro-se or lay individuals and how they are dealt with and recognized in court proceedings. In the affidavit to the States Second Motion to Extend the Time to file it's brief the affidavits states that "no attempt has been made to contact him," Bettwieser, to seek his view on the extension because Bettwieser was "appearing pro-se" or in other words because he is pro-se there is no need to contact him. (SCF)

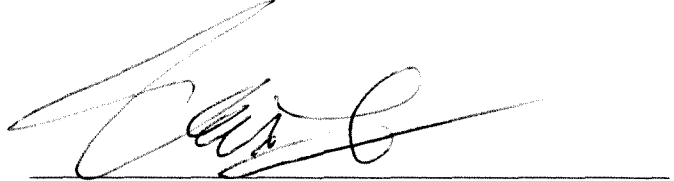
The lower courts and State clearly expect lay individuals to adopt a standard that is far beyond the grasp of fairness that the Courts and State cannot even adopt or are willing to apply for themselves. Appellant review must accept a supervisory role to where all litigants can expect the constitution, law, and precedence to apply for their cause. If lawyer are held unaccountable there will be wide spread abuse.

CONCLUSION

Therefore this court can conclude that the State did not object to the pretrial proceeding in the

Magistrates Division nor in the District Court acting in an appellant capacity and so has no standing to argue from the issues in those courts and that the District Court erred when it dismissed the case absent prejudice to the Respondent's and that the issues in the Appellants brief are not objected to therefore must prevail on those issues.

Honestly and Respectfully submitted this 27th Day of February 2013




Martin Bettwieser

CERTIFICATE OF SERVICE

I certify that I caused a true and correct copy of the the APPELLANT'S REPLY BRIEF to be served by pre paid first class mail on the 27th day of February, 2012 to the following;

Russell Spencer
Deputy Attorney General
Criminal Division
P.O. Box 83720
Boise, Idaho 83720-0010



Martin Bettwieser

COPY

NO. _____ FILED _____
A.M. 10:09 P.M. _____

NOV 16 2012

CHRISTOPHER D. RICH, CLERK
By BRIAN D. CHEPPE, DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff/Respondent,

vs.

MARTIN BETTWIESER,

Defendant/Appellant.

Case No. CR-IN-2010-0030032

ORDER ON MOTION
TO RECONSIDER

This case came before the Court on Appellant Martin Bettwieser's (Bettwieser's) motion to reconsider the order of this Court of June 28, 2012 on Bettwieser's objection to the clerk's record. The Court finds that no hearing on the motion is necessary. For the reasons that follow, the Motion to Reconsider will be denied.

Bettwieser's Motion to Reconsider requests the following:

1. An order that the Clerk of the District Court issue Bettwieser another record on appeal due to Bettwieser having to "surrender" his copy to the Court at the hearing on his objection. As the Court recalls, the Court stated it would look at Bettwieser's copy of the record for comparison, and warned Bettwieser that if he made his copy of the record an exhibit, it could not be returned to him. Since Bettwieser did have this copy marked and admitted, the Court sees no reason to order another copy for him.

ORDER ON MOTION TO RECONSIDER - PAGE 1

Exhibit "A"
Girl supporting Exhibit A's

2. For the Court to rule that Exhibit C is similar to #19 in the clerk's record, etc., the Court declines to make such findings of fact.

3. That the Court rule on all objections presented including:

(a) That a pretrial memorandum be included in the record as the parties stipulated.

The Court sees no reason to rule on an issue that was stipulated.

(b) That all post-pretrial motions and orders and filings be included in the record.

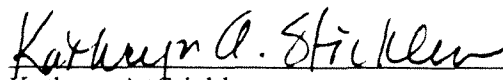
The Court notes that Bettwieser has filed an Amended Notice of Appeal in which he requested these documents be included in the record. He does not need an order to that effect on the present motion.

4. That this Court recall the clerk's record from the Supreme Court for ruling on comparison or rule that hard copies of the record need to be supplied to the Idaho Supreme Court. This Court is of the opinion that it does not have the authority to recall the record.¹ The Court also sees no reason to provide hard copies to the Supreme Court.

Based on the foregoing, the Motion to Reconsider is denied.

IT IS SO ORDERED.

Dated this 15th day of November 2012.


Kathryn A. Sticklen
Senior District Judge

¹ It is not clear why a comparison is necessary, or who would conduct it.

AFFIDAVIT

STATE OF IDAHO)
) ss
COUNTY OF ADA)

RUSSELL J. SPENCER, being first duly sworn on oath, deposes and says:

(1) The date on which the brief of the State of Idaho is due is December 21, 2012.

(2) One extension of time has previously been granted.

(3) An extension of time is requested inasmuch as the Office of the Attorney General, owing to the large volume of criminal appeals, has been unable to process all briefs within the established time limits, and would be unable to adequately research the issues involved in the case if an extension of time were not granted. During the past 28 days, I have filed briefs in the cases of State v. Beadz, #39387; State v. Collins, #39401; State v. Doe (2012-11), #39629; State v. Smith, #39704; State v. McCullough, #39741; State v. McKean, #39213, 39214; State v. Weathers, #39645 and completed other assignments as directed by the Chief of the Criminal Division.

(4) The State of Idaho requests an extension of 28 days from the due date, whereupon its brief would become due on January 18, 2013.

(5) The parties have not stipulated that the proposed extension be granted.

(6) Appellant is appearing *pro se* and no attempt has been made to contact him.

IDAHO SUPREME COURT



IDAHO COURT OF APPEALS

Clerk of the Courts
(208) 334-2210

P.O. Box 83720
Boise, Idaho 83720-0101

MARTIN H. BETTWIESER
3862 YORKTOWN WAY
BOISE, ID 83706

DOCUMENT(S) FILED

Docket No. 39106-2011

STATE OF IDAHO v. MARTIN H. BETTWIESER
Ada County District Court #2010-30032

Be advised that the following document(s) was/were filed in the District Court/entered by the District Court and received by this office on JULY 13, 2012:

MOTION TO RECONSIDER

07/13/2012 DB

For the Court:
Stephen W. Kenyon
Clerk of the Courts

IDAHO SUPREME COURT



IDAHO COURT OF APPEALS

Clerk of the Courts
(208) 334-2210

P.O. Box 83720
Boise, Idaho 83720-0101

MARTIN H. BETTWIESER
3862 YORKTOWN WAY
BOISE, ID 83706

DOCUMENT(S) FILED

Docket No. 39106-2011

STATE OF IDAHO v. MARTIN H. BETTWIESER
Ada County District Court #2010-30032

Be advised that the following document(s) was/were filed in the District Court/entered by the District Court and received by this office on JULY 2, 2012:

ORDER ON OBJECTION TO THE RECORD

The APPELLANT'S BRIEF(S) must be filed by AUGUST 9, 2012.

07/05/2012 DB

For the Court:
Stephen W. Kenyon
Clerk of the Courts

Martin Bettwieser
3862 Yorktown way
Boise, Idaho 83706
(208) 336-8804

JUN 26 2012

CHRISTOPHER D. RICH, Clerk
By ELAINE TONG
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO
Plaintiff, Respondent

vs.

MARTIN BETTWIESER
Defendant, Appellant

)
) Case No. CR-IN-2010-0030032
)
) MOTION TO CONTINUE HEARING
) ON OBJECTION TO CLERKS RECORD
) AND FOR ORDER TO RETURN
) CLERKS RECORD ON APPEAL
)
)

Comes now the appellant Martin Bettwieser and does move this court for an order to continue the hearing to the OBJECTION OF THE CLERKS RECORD , that was held June 14, 2012 and for an order to the Idaho Supreme Court to return the Clerks Record that has been filed with it in this case as set forth pursuant to *I.A.R. 29* and supporting affidavit and argument .

ARGUMENT

Background

A Notice of Appeal was filed with this court from this case to the Idaho Supreme Court on August 22, 2012 of which a clerks record was requested. The Appeals Clerk for the District Court lodged the

Clerks Record with the Idaho Supreme Court on November 23, 2011. This court has ruled from the bench on June 14, 2012 that Bettwieser was not served the clerks record on appeal until March 27, 2012. A hearing was held on Bettwieser's Objection to the clerks record o June 14, 2012. There was no objection by the State to filing of that objection. A hearing was held on the objection with no time allowed to present a witness for testimony to the objection and the State was giving oral argument to facts and evidence that were not part of the record. This court did not have the record and Bettwieser was forced to present his record as evidence to the court but even his record was not an accurate record to make a just ruling.

Argument.

The record in the District Court clearly shows that Bettwieser was requesting clarification of a hearing that this court had set that required the presenting of evidence and not just oral argument. Bettwieser had a witness present for that hearing which he was not allowed to call. There was never any objection by the State to the form of hearing that Bettwieser was requesting. We had already started late from the previous hearing that was set which made this court more anxious to not complete the hearing as requested by Bettwieser. Bettwieser should be allowed to present all the evidence and testimony that is necessary to issues on Appeal. Issues on appeal include all post judgment issues.

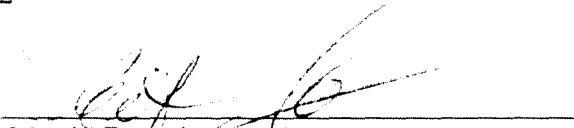
I.A.R 17(a)(1)(C) State v. Fortin, 124 Idaho 323

Further more the Clerks record on appeal had already wrongly been forwarded to the Idaho Supreme Court and so this Court did and does not have the correct standard or record on which to rule on an objection. The State made several references to that record that was lodged with that court but this court doesn't have that record to assess the accuracy of any argument by the State. Bettwieser was forced to submit his copy to the court to make at least minimal assessment of the inaccuracies of the record, but even so Bettwieser record was not supplied nor served accurately as pointed out in court. This court needs the record that was lodged with Supreme court to make an accurate assessment.

Therefore this court should order that the Clerks Record that was lodged with the Idaho Supreme court be returned so that there can be an accurate assessment as to the record between it and Bettwieser's Record and the Objections that have been made.

Further more, that there be another hearing when that record is returned, or before, so Bettwieser can finish the evidence and testimony that was originally requested to that objection so the issues can be fully and properly presented and not prejudice Bettwieser or his cause and that Bettwieser can receive an accurate and proper record as now he has had to surrender it to the Court for the courts review because this court does not have record to by.

Dated this 25th day of June, 2012

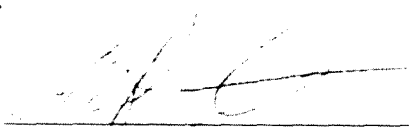


Martin Bettwieser

CERTIFICATE OF SERVICE

I certify that I caused a true and correct copy of the MOTION TO CONTINUE HEARING ON OBJECTION TO CLERKS RECORD AND FOR ORDER TO RETURN CLERKS RECORD ON APPEAL to be served by pre-paid first class mail on the 25th day of June, 2012 to the following:

Sara Miller
Ass. City Attorney
P.O.Box 500
150 Capitol Blvd
Boise, Idaho 83701-0500



Martin Bettwieser

STATE OF IDAHO

)
)ss
)

County of Ada

AFFIDAVIT OF MARTIN BETTWIESER

Martin Bettwieser, being duly sworn upon oath deposes and states the following.

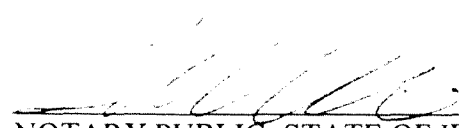
- 1) That I am the Defendant in this action and am over the age of 18 and have full personal knowledge of all events and facts of this case and action and am a mail carrier.
- 2) That I received the Appeal Record For Case No. CR-IN-2010-0030032 on March 28, 2012 by personal delivery by certified, return receipt mail and that return receipt mail can only be delivered personally.
- 3) That the appeal record was mailed to me by the Ada County \Clerks office on March 26, 2012.
- 4) That I objected to the appeal record after it was personally served upon me at the date above.
- 5) That the Clerks Record on Appeal was wrongly and prematurely sent to the Idaho Supreme Court to progress the appeal in this case.
- 6) That I requested a hearing to present evidence and testimony to that objection but there was only enough time allotted for oral argument and not to call the witness that was requested and present for that hearing, nor enough time to present all evidence with complete rebuttal argument and closing argument.
- 7) That the the District Court did not have the appeal record from this case to properly address the objection, because it had been wrongly lodged with the Idaho Supreme Court.
- 8) That State gave argument of facts to the record when the record was not even present.

Dated this 25th day of June, 2012

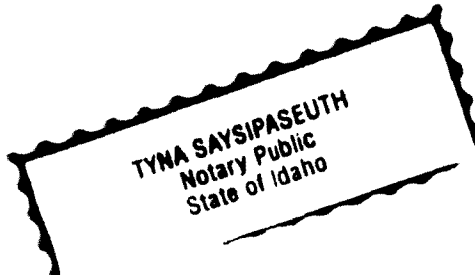


Martin Bettwieser

SUBSCRIBED AND SWORN BEFORE ME, this 25th day of June, 2012



NOTARY PUBLIC, STATE OF IDAHO
Residing in Boise, my commission expires: 3/18/2016


Tyna Saysipaseuth
Notary Public
State of Idaho

ADA COUNTY MAGISTRATE MINUTES

Martin H Bettwieser CR-IN-2010-0030032

DOB: [REDACTED]

Scheduled Event: **BC-Court Trial** Wednesday, November 03, 2010 01:15 PM

Judge: **Kevin Swain**

Clerk: Wendy Mey

Interpreter: _____

Prosecuting Agency: AC ☒ BC ☐ EA ☐ GC ☐ MC

Pros: Yerry Taylor

PD / Attorney: _____

• 1 I49-673 Vehicle Safety Restraint-Fail to Use I

146037 Case Called Defendant: ☒ Present ☐ Not Present ☐ In Custody

☐ Advised of Rights ☐ Waived Rights ☐ PD Appointed ☐ Waived Attorney

☐ Guilty Plea / PV Admit ☐ N/G Plea ☐ Advise Subsequent Penalty

☐ Bond \$ _____ ☐ ROR ☐ Pay / Stay ☐ Payment Agreement

☐ In Chambers ☐ PT Memo ☐ Written Guilty Plea ☐ No Contact Order

#1 calls sw #1 - Sworn

Officer Fred Schultz #1 dx sw #1 -

Court #2 cx sw #1 -

#1 obj / Court Sustains

#1 dx sw #1 / Court #2 dx sw #1

Court - sw #1 excused - State rest

#2 no test: - / Parties rest

Court hears argument

Denies motion Dismiss

Finish () Release Defendant

unless Def Guilty

10 no CC
appealing rights
30 day hold.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, ADA COUNTY, MAGISTRATE DIVISION

STATE OF IDAHO,

Plaintiff,

vs.

Defendant.

Case No. _____

PRE-TRIAL MEMORANDUM

Appearances: Prosecutor _____

Defense Counsel _____

Interpreter _____

☐ Jury trial re-set for _____, at _____ a.m.

☐ Jury trial waived and case is to be re-set for court trial.

☐ Plea and sentence via Defense Counsel authorized by Defendant: Rule 6(d), IMR and/or IIR.

☐ Pre-trial motions, timely filed, are set for hearing on _____, at _____ m.

☐ Sentencing is set for _____ at _____ m.

☐ Defendant failed to appear. Absence not explained, justified, or excused.
Trial date vacated. Bond forfeited/ROR revoked. Bench Warrant issued.
Bond set at \$_____.

☐ Other: _____

Dated this _____ day of _____, 20____.

Defendant

Address: _____

Telephone: _____

Counsel for Defendant

Deputy Prosecuting Attorney

Magistrate Judge

AB

NO. _____ FILED _____
A.M. _____ P.M. _____

CHRISTOPHER D. RICH, Clerk
By AMY LANG
DEPUTY

**MOTION TO CLARIFY AND
RESCHEDULE HEARING**

1.

Bettwieser further requests that the hearing for May 10, 2012 be rescheduled due to the fact that he has plans on being out of state for on that date. Bettwieser's available dates would be from April 15 to May 2 and then any time after May 22, 2012.

Therefore Bettwieser requests for a clarification of the Notice of Hearing and rescheduling of the Hearing of May 10, 2012

Dated this 13th day of April, 2012


Martin Bettwieser

1.

CERTIFICATE OF SERVICE

I certify that I caused a true and correct copy of the MOTION FOR CLARIFICATION AND RESCHEDULING OF HEARING to be served by pre-paid first class mail on the 13th day of April, 2012 to the following:

Sara Miller
Ass. City Attorney
P.O.Box 500
150 Capitol Blvd
Boise, Idaho 83701-0500


Martin Bettwieser

2.

STATE OF IDAHO

)

)SS

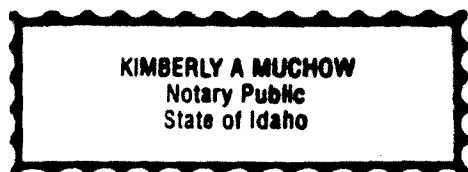
County of Ada)


AFFIDAVIT OF MARTIN BETTWIESER

Martin Bettwiser, being duly sworn upon oath deposes and states the following.

- 1) That I am the Defendant in this action and am over the age of 18 and have full personal knowledge of all events and facts of this case and action.
- 2) That I had scheduled a vacation to be out of state from May 3, 2012 through approx. May 22, 2012 since February of this year.

SUBSCRIBED AND SWORN BEFORE ME, this 13 day of April, 2012




NOTARY PUBLIC, STATE OF IDAHO
Residing in Boise, my commission expires:

My Commission Expires 09.22.2014


Martin DeFries

MAR 16 2012

CHRISTOPHER D. RICH, Clerk
By MARTHA LYKE
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff/Respondent,

vs.

MARTIN BETTWIESER,

Defendant/ Appellant.


Case No. CR-IN-2010-0030032

ORDER DENYING
MOTION TO RECONSIDER

The Court having reviewed Defendant/Appellant Martin Bettwieser's Motion to Reconsider,

IT IS HEREBY ORDERED, the Motion to Reconsider is DENIED.

Dated this 15th day of March 2012.


Kathryn A. Sticklen
Senior District Judge

FEB 21 2012

CHRISTOPHER D. RICH, Clerk
By SHARY ABBOTT
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff/Respondent,

Case No. CRIN-2010-30032

vs.

ORDER

MARTIN BETTWIESER,

Defendant/Appellant.

This case is before the Court on Defendant/Appellant Martin Bettwieser's (Bettwieser) Objection to the Clerk's record. After having attempted unsuccessfully to reach Mr. Bettwieser by telephone to set a hearing, the Court has reviewed the objection to the Clerk's record and finds that no hearing is necessary. For the reasons that follow, the motion will be denied.

The Objection to Clerk's Record is not truly an objection to the record. It simply asserts that Bettwieser has not received the record. However, the appeals clerk's record demonstrates that Bettwieser was notified by that clerk by telephone and/or by sending an acknowledgment of service that the Appellant's copy of the record could be obtained from the Clerk's office. It appears that Bettwieser has not gone to the Clerk's office to obtain it.

Idaho Appellate Rule 29 provides that the record may be served in person or by mail. Service by mail is not required. Notification that the record has been prepared and can be obtained from the clerk leads to personal service. The fact that Bettwieser chose not to obtain the record and be served by personal service, does not allow him to delay the appeal process.

1 Based upon the foregoing, the objection to the Clerk's record is denied.

2 IT IS SO ORDERED.

3 Dated this 21st day of February 2012.

4 Kathryn A. Sticklen
5 Kathryn A. Sticklen
6 District Judge
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